

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

AMIGA, INC., a Delaware corporation,

Plaintiffs,

v.

HYPERION VOF, a Belgian corporation,

Defendant.

HYPERION VOF, a Belgian General  
Partnership,

Counterclaim Plaintiff,

v.

ITEC, LLC, a New York Limited Liability  
Company,

Counterclaim Defendant.

No. 07-0631-RSM

**DECLARATION OF EVERT CARTON  
IN OPPOSITION TO ITEC'S MOTION  
TO DISMISS, OR IN THE  
ALTERNATIVE, TO TRANSFER**

Evert Carton, under penalty of perjury, declares and states as follows:

1. I am Managing Partner of Hyperion VOF, a software company located in Belgium. I currently reside in Belgium. I am Belgian and a US citizen. I am over the age of 18, and I am competent to testify.

**DECLARATION OF EVERT CARTON - 1**

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1           2. I am 37 years of age, born 24 October, 1970, in Durham, NC. I grew up in  
 2 Belgium.

3           3. I graduated as a Mechanical Engineer. I have worked in various IT positions in  
 4 the pharmaceutical (clinical trial setup and instrument interfaces) and retail sector  
 5 (programming custom IDMS database applications in PL/I on Amdahl mainframe computers).  
 6 I have worked as an independent IT-consultant through Hyperion, in the steel (business  
 7 intelligence) and telecom-industry (business intelligence and Web-technologies). Hyperion has  
 8 currently secured a position for me as an independent contractor working as a system/software  
 9 architect at the largest Belgian mobile telecommunications operator.

10          4. My skills range from basic knowledge to proficient level in several  
 11 programming languages (C, C++, Java, Python, Perl, SAS). I worked on different operating  
 12 environments, ranging from (mainly) Unix systems (HP-UX, Solaris/SunOS, Linux) to  
 13 mainframe systems.

14          5. I founded Hyperion VOF, better known as Hyperion Entertainment, in February  
 15 1999 with Mr. Ben Hermans, whom I met during my college years. Mr. Hermans later opted to  
 16 pursue a legal career. I am to this date Managing Partner at Hyperion. The company  
 17 specializes in 3D graphics and 3D driver development, firmware development for embedded  
 18 systems, IT consulting and the conversion of high quality entertainment software from  
 19 Windows to niche platforms including Amiga, Linux (x86,PPC) and MacOS .

20          6. Based on my general educational background, my experience in the industry,  
 21 and my specific knowledge of events related to Amiga Washington, Itec, Amiga Delaware,  
 22 Hyperion and Eyetech, I have personal knowledge of the matters stated herein.

23          7. Mr. Grzymala contends that Itec has done no business in Washington and that it  
 24 has no other connection with Washington State. (Grzymala Dec., ¶¶3, 23.) In fact, a May 22,  
 25 2003 "Loan Facility Agreement" between Itec and Amiga Washington was recently produced  
 26

**DECLARATION OF EVERT CARTON - 2**

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1 in this litigation that proves Mr. Grzymala's contention to be false. A true and accurate copy of  
 2 that Loan Facility Agreement, as produced by Amiga Delaware, is attached hereto as Exhibit  
 3 A. In that contract Itec and Amiga Washington state that Itec had already loaned \$75,750 to  
 4 Amiga Washington (located at that company's office in Ravensdale, Washington), and that Itec  
 5 would loan additional funds up to a total of US \$175,000. (Exhibit A, p. 1.) In §20 of that  
 6 contract, Itec and Amiga Washington agreed that the contract was "to be construed in  
 7 accordance with the laws of the State of Washington, without regard to that state's choice of  
 8 law rules, and that venue would lie in King County, Washington, in the event of any disputes  
 9 between them under the contract. Then, §8 of that contract purports to grant Itec a security  
 10 interest in all of Amiga Washington's goods, some if not all of which would necessarily be  
 11 located in the State of Washington. Attached as Exhibit B hereto is a true and accurate copy of  
 12 the Security Agreement, again recently produced by Amiga Delaware. The Security  
 13 Agreement is dated July 3, 2003, and at §11 it too contains a choice of law and venue provision  
 14 similar to the Loan Facility Agreement in that it specifies Washington. Finally, attached hereto  
 15 as Exhibit C is a true and accurate copy of a letter (once more recently produced by Amiga  
 16 Delaware) dated May 12, 2004 from Pentti Kouri, Managing Member of Itec, to William  
 17 McEwen, then President of Amiga Washington, reflecting the fact that \$267,159 was due and  
 18 owing under the Loan Facility Agreement, including \$50,000 "loaned" on the very date of the  
 19 letter, and that Itec was going to "foreclose" if that entire \$267,159 was not repaid within 10  
 20 days, or by May 22, 2004.  
 21

22       8.     The Loan Facility Agreement, the Security Agreement, and the May 12, 2004  
 23 letter are three pieces of evidence that support the conclusion that Washington State is the  
 24 epicenter of the relationships and transactions between Amiga Washington, Itec and Amiga  
 25 Delaware, and that one of the main aims of that relationship was to fraudulently convey the  
 26

**DECLARATION OF EVERET CARTON - 3**

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1 assets of Amiga Washington away from Amiga Washington's creditors, including Hyperion.  
 2 For instance, less than one month after signing the April 24, 2003 Contract with Hyperion, Itec  
 3 entered into the above-described Loan Facility Agreement with Amiga Washington to cover  
 4 both past and future loans. That Loan Facility Agreement (Exhibit A hereto) is signed by  
 5 Pentti Kouri on behalf of Itec, and he is the same person who signed the April 24, 2003  
 6 Contract on behalf of Itec. (*See* Grzymala Dec., Ex. 1, pp. 12-13.) Note further that, based on  
 7 the third page of Exhibit C, the final \$50,000 "loan" to Amiga Washington went straight into  
 8 the pocket of a corporate insider, Mr. McEwen, rather than being used for the benefit of that  
 9 company's third-party creditors.

10       9. Mr. Kouri also signed the "Stock Purchase and Sale Agreement and Agreement  
 11 of Assignment of Intellectual Property Rights" dated October 7, 2003 (Exhibit D hereto) by  
 12 which Itec purports to assign to KMOS/Amiga Delaware the rights to OS 4.0 (the "Itec/KMOS  
 13 Sale Agreement"). The assignment language appears at Exhibit D, p. 2, second paragraph from  
 14 the bottom and, obviously, in the contract's title. It is particularly noteworthy that Mr. Kouri  
 15 signed the Itec/KMOS Sale Agreement on behalf of all three signatories: Itec, Amiga  
 16 Delaware and Monrepos, LLC, the shareholder of Amiga Delaware. (*See* Exhibit D, p. 2, first  
 17 "Whereas" paragraph re Monrepos' status.) The suspect nature of this transaction is  
 18 highlighted by the fact that at the end of the transaction Itec ended up owning 6,999,000 of  
 19 KMOS' 7,000,000 outstanding shares.

20       10. By comparison, when reading Mr. Grzymala's declaration, one would think that  
 21 he had nothing to do with KMOS/Amiga Delaware. (*See, e.g.*, Grzymala Dec. at ¶18.) The  
 22 documents Hyperion has obtained again disproves Mr. Grzymala's contention. For instance,  
 23 KMOS/Amiga Delaware was involved in some litigation in the United States District Court for  
 24 the Southern District of New York, and we obtained copies of some of the documents filed in

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 26 DECLARATION OF EVERETT CARTON - 4

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1 conjunction with that suit. One of the documents so filed is a copy of the December 10, 2004  
 2 corporate minutes for KMOS/Amiga Delaware, a true and accurate copy of which is attached  
 3 hereto as Exhibit E. In those minutes Mr. John Grzymala is identified as the corporate  
 4 Secretary for KMOS, Mr. Kouri is identified as the Chairman, and Mr. Garry Hare is identified  
 5 as the President and CEO. Amiga Delaware is, again, the plaintiff in this litigation, and thus  
 6 Mr. Gryzmala willingly launched his company into litigation “3,000 miles away” in  
 7 Washington State—something which he now complains is totally unreasonable for his  
 8 companies to have to do. (*See* Grzymala Dec., ¶28.)

9  
 10 11. Mr. Gryzmala also clearly wants to distance Itec (the stated owner of 6,999,000  
       shares) of KMOS’ 7,000,000 outstanding shares) and KMOS/Amiga Delaware from Amiga  
 12 Washington. (*See again* Grzymala Dec., ¶28.) Yet, those same corporate minutes (Exhibit E,  
 13 at ¶2.c) reflect the fact that KMOS was paying a company called “Amino Development  
 14 Corporation” \$240,000, and that KMOS’ CEO (Garry Hare) had to approve of how Amino  
 15 spent that money. How, one may wonder, is this relevant? Because “Amino Development  
 16 Corporation” is actually the renamed Amiga Washington, as is demonstrated by the attached  
 17 corporate registration forms obtained from the Washington Secretary of State. (Compare the  
 18 Uniform Business Identifier numbers on Exhibits F and G, which are the same, to the changing  
 19 names of that corporation.)

20  
 21 12. The ongoing relationship between Mr. Gryzmala, Itec, Mr. Kouri, Amiga  
       Delaware and Amiga Washington/Amino is reflected in Exhibit H hereto, which is a true and  
 22 accurate copy of a “Form D” filed by Amiga *Delaware* with the SEC in January 2006. As is  
 23 reflected on page 2 of that SEC filing, Mr. *John Grzymala* is an Executive Officer and Director  
 24 of Amiga Delaware, Mr. *Pentti Kouri* is a Promoter, Beneficial Owner, Executive Officer and  
 25 Director of Amiga Delaware, *Itec, LLC* is a Beneficial Owner of Amiga Delaware, and *Amino*

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 DECLARATION OF EVERT CARTON - 5

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1 of Ravensdale, Washington (i.e., Amiga Washington) is also a Beneficial Owner of Amiga  
 2 Delaware. Under these circumstances, and considering the Loan Facility and Security  
 3 Agreements (Exhibits A & B), it is difficult to understand how Mr. Gryzmala can in good faith  
 4 maintain that Itec has no business connection with Washington State with respect to the causes  
 5 of action at issue in the federal lawsuit pending here.

6       13. When viewed as a whole, the various contractual maneuvers and machinations  
 7 by which Itec stripped the assets and rights from Amiga Washington and then moved them to  
 8 another entity it controlled, namely Amiga Delaware, were all closely related to the events in  
 9 Washington State that gave rise to the federal suit pending here. For instance, Itec's Loan  
 10 Facility and Security Agreements with Amiga Washington/Amino (i.e., Exhibits A & B)  
 11 contain Washington choice of law and forum selection clauses. Furthermore, by stripping  
 12 those assets away from Amiga Washington and moving them to a different state, Itec caused  
 13 damage to my company in Washington State.

14       14. Additional evidence of Itec's attempt to assume Amiga Washington's place in  
 15 the 3 November 2001 Agreement is found in a declaration filed by Mr. Garry Hare in yet  
 16 another action pending before Judge Lasnik in the Western District of Washington. Again, Mr.  
 17 Garry Hare was the President and CEO of KMOS/Amiga Delaware, of which Mr. Grzymala is  
 18 an officer and director (Ex. H), and it was Mr. Hare who controlled how Amiga  
 19 Washington/Amino spent money that supposedly was owned by Amino, not KMOS. (Exhibit  
 20 E, ¶2.c.) As Mr. Hare stated in his declaration dated March 12, 2004: "On April 24, 2003, Itec  
 21 . . . acquired all rights and ownership to Amiga [Washington's] Operating System ("Amiga  
 22 OS"). Itec's acquisition included Amiga OS source code, including, but not limited to, the  
 23 Classic Amiga OS, OS 3.1, OS 3.5, OS 3.9, OS 4.0 (not yet commercially available) and all  
 24 subsequent versions of this source code and associated trademarks." (Ex. I, ¶2.) Thus, it is

**DECLARATION OF EVERETT CARTON - 6**

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1 clear to me that Mr. Grzymala's fellow officer believed that Itec was acquiring Amiga  
 2 Washington's rights under the November 3, 2001 Agreement through the April 24, 2003  
 3 Contract between Itec and Hyperion, which is found at Grzymala Dec., Ex. 1, pp. 12-13.

4       15. Next, Mr. Hare goes on to testify that in an October 10, 2003 agreement  
 5 between Itec and KMOS, KMOS "acquired all of Itec's interest in Amiga's Amiga OS family  
 6 of products," and that as a part of that agreement "KMOS specifically agreed to honor the terms  
 7 of [the] November 3, 2001 [Agreement]." (Ex. I, ¶¶4-5.) In other words, and contrary to  
 8 Grzymala's contention at ¶6 of his declaration, Itec must have considered itself a party to the 3  
 9 November 2001 Agreement, as KMOS subsequently believed that it was bound by all of the  
 10 requirements of that Agreement through its acquisition of the same from Itec.  
 11

12       16. Finally, I want to point out that in the same declaration Mr. Garry Hare directly  
 13 contradicts Mr. Grzymala's assertion (at paragraph 20 of Grzymala's declaration) that Itec  
 14 "asserts no rights or claims to any of the Amiga-related trademarks." Mr. Hare does so by  
 15 stating that "Itec's acquisition included Amiga OS source code including . . . associated  
 16 trademarks." (Ex. I, ¶2.)

17       17. All of the above conduct—guided as it was by the common core of insiders<sup>1</sup> of  
 18 Amiga Washington, Itec and Amiga Delaware—lends substantial support to Hyperion's claims  
 19 in the Washington litigation that Itec actively participated in a scheme to fraudulently convey  
 20 the Washington assets of Amiga Washington out of that entity and out of the reach of Amiga  
 21 Washington's creditors, including Hyperion. As I understand it, when tortuous acts of this sort  
 22

23  
 24  
 25       1 Another one of those insiders is Mr. Bill McEwen, who both was the President of Amiga  
 26 Washington and is now the acting President of Amiga Delaware.

1 are committed in Washington, the state's long arm statute at RCW 4.28.185(1)(b) extends to  
 2 out-of-state entities like Itec.

3       18.     Contrary to Mr. Grzymala's assertion at ¶5 of his declaration, the April 24, 2003  
 4 Contract (see Grzymala Dec., Exhibit 1, pp. 12-13) did not require the "performance" of  
 5 anything in New York. Rather, it only provides for the "transfer [of] the ownership of " OS  
 6 4.0. (Grzymala Dec., Exhibit 1, p. 12.) The transfer of the ownership of OS 4.0 would have  
 7 been self-executing, without the performance by Hyperion of any task in New York, if the  
 8 November 3, 2001 and April 24, 2003 contracts had been performed by Amiga Washington,  
 9 Itec and/or Amiga Delaware. In fact, as this Court found in its June 11, 2007 order, at most  
 10 \$24,750 was paid to Hyperion by an aggregate of entities, and we dispute a variety of issues  
 11 related to the same, including whether some of that money needs to be applied to other  
 12 outstanding invoices instead of the \$25,000 "buy-in" amount, and whether the payments that  
 13 were made were timely made. (See Dkt. #40, pp. 8-9.) Thus, Hyperion's obligation to make  
 14 this limited "transfer of ownership" never became due.

16       19.     Even if some type of "delivery" was contemplated by the April 24, 2003  
 17 agreement, that delivery would have most logically and securely been accomplished by Itec  
 18 downloading OS 4.0 from computer servers located in Europe. To explain, the Amiga OS 4.0  
 19 source code is located on a Concurrent Versions System (CVS) server in Germany. A CVS  
 20 server is a server running software which automates the storing, retrieval, logging,  
 21 identification, and merging of revisions of software source code and object code in order to  
 22 avoid incompatible changes being made by multiple developers at the same time. A "delivery"  
 23 of software source code and object code would typically take the form of a "check out" of the  
 24 source code from the CVS server located in Germany from anywhere in the world. Thus,  
 25 Hyperion would never have had reason to deliver anything to New York.

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 DECLARATION OF EVERETT CARTON - 8

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1       20. In addition, Itec's position is logically inconsistent, since Itec asserts that it is  
 2 merely a venture financing firm. (*See* Ex. A, fifth "Whereas" clause; Grzymala Dec., ¶3.)  
 3 Thus, if Itec is to be believed, it never intended to actually utilize OS 4.0. Rather, Itec merely  
 4 would have acted as a conduit to transfer "title" to OS 4.0 from Amiga Washington to  
 5 KMOS/Amiga Delaware, if it had in fact performed all of the obligations required under the  
 6 November 3, 2001 Agreement. (For example, the \$25,000 was not paid. See Dkt. #40, at pp.  
 7 8-9.) In short, contrary to Itec's assertions, the April 24, 2003 Contract did not require  
 8 performance in New York, even if Itec had fully performed all of its obligations under that  
 9 contract.

10      21. The plain language of the April 24, 2003 Contract indicates the parties' intent to  
 11 incorporate all of the November 3, 2001 Agreement by stating that the transfer shall be "in  
 12 accordance with the provisions of the November [3], 2001 [Agreement]." (Grzymala Dec., Ex.  
 13 1, p. 12.) This mutual understanding is reflected in Exhibit J hereto, which is an (erroneous-in-  
 14 amount) record of payment from Hyperion to Itec stating that a payment was made "pursuant to  
 15 article 3.01 of the November 3, 2001 agreement between Amiga, Eyetech and Hyperion." Itec  
 16 never objected to this reference to the November 3, 2001 Agreement because Itec agreed with  
 17 that understanding until its nearly-100% owned company (Amiga Delaware) launched the  
 18 Washington litigation and ran into difficulty in this Court. Here, it is clear from the Grzymala  
 19 Dec., ¶¶6-8, that Itec was fully familiar with the November 3, 2001 Agreement at the time it  
 20 agreed to incorporate its language in the April 24, 2003 Contract. Itec should not be allowed  
 21 now to avoid the forum selection clause of the November 3, 2001 Agreement.

22      22. Mr. Grzymala has no facts upon which to base his assertion in ¶9 of declaration  
 23 that the November 3, 2001 Agreement was "abandoned." Indeed, he offers no factual support  
 24 for that claim outside of his legal assertion in that regard.

25      DECLARATION OF EVERETT CARTON - 9

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1       23. I resent the accusation that Hyperion "raced" to the courthouse in Washington  
2 State in order to deprive Itec of a New York forum. Rather, it was Itec, Mr. Grzymala, Pentti  
3 Kouri and even Amiga Washington ("Amino"), acting through Amiga Delaware, who launched  
4 the Washington litigation. Then, after this litigation took a "wrong turn" before this Court, this  
5 same group sought to open up a two-front war against Hyperion through Itec's filing of an  
6 action in New York. In short, it is clear that Itec seeks to have a second bite at the apple in  
7 New York, even though it was apparent from this Court's June 11, 2007 ruling denying the  
8 motion for a preliminary injunction that Itec was intimately involved in the facts underlying  
9 this litigation.

10      24. Contrary to Mr. Grzymala's contentions at ¶¶33-35 of his declaration, Itec's  
11 desire to forum shop and pursue two parallel pieces of litigation is obviously intended to create  
12 the risk of inconsistent outcomes, for Itec hopes to achieve in New York what Amiga Delaware  
13 appears unlikely to achieve in Washington, namely the transfer of OS 4.0 to Amiga Delaware.

14      25. Finally, I want to correct Itec's wrong assertion that Hyperion is disputing  
15 personal jurisdiction over it by the United States District Court for the Western District of  
16 Washington. In fact, when this Court specifically asked our counsel about this during the  
17 hearing on the motion for a preliminary injunction, Mr. Kinsel acknowledged that personal  
18 jurisdiction and venue exists over the parties in Seattle, Washington. (See Dkt. # 37, at p. 29.)  
19 Mr. Kinsel did state that Hyperion had asserted an affirmative defense with respect to the  
20 adequacy of service of process, but I believe that we waived that defense when we voluntarily  
21 filed suit against Itec in this forum. In case there is any doubt on that score, I hereby waive on  
22 behalf of Hyperion that affirmative defense against Amiga Delaware and submit the company  
23 to the jurisdiction of the United States District Court, Western District of Washington.  
24

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DECLARATION OF EVERETT CARTON - 10

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1  
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS  
2 OF THE STATE OF WASHINGTON AND BELGIUM THAT THE  
3 FOREGOING IS TRUE AND CORRECT.

4 November 25th 2007

5 Date



Evert Carton

6 Antwerpen, Belgium

Place

7 523p.doc

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DECLARATION OF EVERT CARTON - 11

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## LOAN FACILITY AGREEMENT

This agreement made on May 22, 2003 is between Itec LLC (Lender) located at 102 Prince Street, New York, NY 10012 and Amiga Inc. (Borrower) located at 24403 256<sup>th</sup> Avenue SE, P.O. Box 887 Ravensdale, WA 98051.

Whereas Amiga Inc. has been unable to secure funding necessary to continue operating as a viable business,

Whereas the management of Amiga believes that it will be able to arrange required funding within a period of at most one year.

Whereas Amiga Inc. will require immediate and on going funding to keep itself 'afloat' while finding a permanent funding solution or restructuring of its business.

Whereas Amiga Inc. has significant unsecured debts, including salaries owed to employees, which the company is unable to pay unless it has the time and money to raise the required funding.

Whereas Itec LLC is a venture capital company familiar with the business area and field of software technology of Amiga Inc., and is in the business of providing bridge funding to start up companies, including companies in financial distress.

Whereas Itec LLC has to date loaned 75,750 dollars to Amiga Inc. to help keep the company 'afloat'.

Now, therefore, it is agreed that Itec LLC will provide a loan facility of 175,000 US dollars to Amiga Inc. including the monies already advanced (75,750 dollars) which hereby become part of this loan facility agreement. The additional loans will be provided in such amounts and at such times as requested by Mr. William McEwen, the CEO of Amiga Inc. up to the total amount of \$175,000 during the period from May 22, 2003 to the due date of May 22, 2004.

1. Transfer of Funds. Itec LLC will make funds available in installments at the request of Mr. McEwen and in such amounts and to such accounts as requested by him, up to the total amount of 175,000 dollars. The amount transferred is added to the outstanding loan balance, and the accrued interest on the transferred money is added to the outstanding accrued interest balance.
2. Interest. All the monies loaned by Itec LLC to Amiga Inc. pursuant to this agreement will be paid back with an accrued interest at an annual rate of 12 percent. All computations of interest shall be made on the basis of a year of 365 days for the actual number of days (including the first day, not excluding the last day) from the day Itec LLC has transferred an installment of the loan to an account designated by Mr. William McEwen to the due date of May 22, 2004.

3. Payment. The outstanding loan balance and the outstanding interest balance become due and are payable in full on May 22, 2004.
4. Prepayment. Borrower may prepay its obligations under this agreement in full or in part at any time or from time to time without premium or penalty.
5. Attorneys Fees, and Other Costs and Expenses. Borrower agrees to pay all costs and expenses which the Lender may incur by reason of any failure to pay sums evidenced hereby when due, including, without limitation, reasonable attorneys fees with respect to legal services relating thereto and to a determination of any right or remedies of the Lender under this Agreement, and reasonable attorneys fees relating to any actions or proceedings which the Lender may institute or in which the Lender may appear or participate and in any reviews of and appeals therefrom, and the reasonable costs of searching records and determining rights in or title to or liens upon any collateral, and all such sums shall be secured hereby. Any judgment recovered by the Lender hereon shall bear interest at the rate set forth herein, but not to exceed the highest rate then permitted by law.
6. The Use of Proceeds. It is agreed that the use of the loan proceeds is solely at the discretion of Mr. William McEwen for such purposes as he determines are necessary to keep Amiga Inc. 'afloat', including payments to himself as the sole officer of the company.
7. Indemnification with Respect to Use of Proceeds. It is further agreed that Amiga Inc. and Mr. William McEwen indemnify and hold harmless the lender with respect to any claims or disputes that may arise with respect to the use of the loaned funds.
8. Security. All the monies loaned to the borrower pursuant to this loan agreement will be fully secured by a first security interest in all the intellectual property of Amiga Inc, including but not limited to the source code, object code and software of the so-called Amiga Content Engine, various titles of games and other titles of content owned by Amiga Inc, as well as the name, the trademark and the brand Amiga, and the Amiga logo, as further specified in a separate Security Agreement between the two parties.
9. Default on the Security Agreement. The occurrence of any of the following shall constitute an "Event of Default Under the Security Agreement".
  - (a) the breach of any material condition or obligation under the Security Agreement and the continuation of such breach for 30 days after receipt of notice thereof; or
  - (b) the filing of a petition by or against the Borrower under any provision of the Bankruptcy Reform Act, Title 11 of the United States Code, as

amended or recodified from time to time, or under any similar law relating to bankruptcy, insolvency or other relief for debtors; or appointment of a receiver, trustee, custodian or liquidator of or for all or any part of the assets or property of the Borrower or the making of a general assignment for the benefit of creditors by the Borrower.

10. Remedies on Borrower Default on the Security Agreement. After an Event of Default, the interest rate on all amounts due and owing shall be 16% per annum. Upon the occurrence of any Event of Default, the Lender, at its option, May (a) by notice to the Borrower, declare the unpaid principal amount of this Note, all interest accrued and unpaid hereon and all other amounts payable hereunder to be immediately due and payable, whereupon the unpaid principal amount of this Note, all such interest and all such other amounts shall become immediately due and payable, without presentment, demand, protest or further notice of any kind, provided that if an Event of Default shall occur, the result which would otherwise occur only upon giving of notice by the Lender to the Borrower as specified above shall occur automatically, without the giving of any such notice; and (b) whether or not the actions referred to in clause (i) have been taken, exercise any or all of the Lender's rights and remedies available to the Lender under the Security Agreement and applicable law.
  
11. Total Loan Amount. If the amount advanced by the lender to the borrower is less than 175,000 dollars, the security agreement applies to the amount actually advanced, and all the other terms and conditions of the loan agreement remain in force as specified in this agreement.  
  
If, at the request of the borrower, and at the sole discretion of the lender, the amount of monies actually advanced is in excess of 175,000 dollars, the terms and conditions of this loan agreement as well as the security agreement apply in every respect, except for the amount of the loan, to such higher amount.
  
12. Notice of Payment. The lender will provide a full accounting of all monies advanced to the borrower by means of transfers to accounts designated by Mr. McEwen on behalf of the borrower, subject to this loan agreement with accrued interest on each installment, as well as a computation of the total amount to be paid on May 22, 2004 on or about May 15, 2004. Such accounting will be provided by e-mail, which is accepted by the borrower to be sufficient, and by registered mail.
  
13. Sufficiency of Notice. The sending of the accounting information is agreed to be sufficient and complete notification by the lender that all the monies owed with interest, in the total amount provided by the lender, are due and are to be fully paid no later than May 22, 2004.
  
14. Default on Loan Payment. If the borrower does not pay the full amount owed on or before May 22, 2004, it is agreed that the Lender can at its sole discretion

foreclose on all the assets that secure the loan pursuant to the loan agreement and the security agreement.

15. **Penalty Interest.** If the loan is not fully paid with interest on May 22, 2004, it is agreed that the amount owed, including accrued interest as of May 22, 2004 accrues interest at a penalty rate of 16 percent annual to be computed daily (based on a year of 365 days) until such time that the lender has obtained a free and clear title to all the assets that secure its loan to the borrower.
16. **Maximum Interest.** Notwithstanding any other provisions of this Note, interest, fees and charges payable by reason of the indebtedness evidenced hereby shall not exceed the maximum, if any, permitted by governing law.
17. **Indemnification.** It is recognized that in making the loan agreement, the lender relies on warrants and representations of the borrower and Mr. McEwen with respect to all issues relevant to the loan agreement and the security agreement, including but not limited to his stated authority to enter such agreements on behalf of Amiga Inc., and Mr. McEwen explicately indemnifies and holds harmless Itec LLC and Dr. Pentti Kouri against any claims or disputes concerning the loan agreement, the security agreement, the use of the loan proceeds, or, in case of failure by the borrower to pay the loan back in full with interest on May 22, 2004, the foreclosure on the assets of Amiga Inc. by the lender.
18. **Transferability.** It is further agreed that Itec LLC may, at its sole discretion, freely transfer or sell the loan to another entity with all the terms, conditions and provisions of the loan agreement and the security agreement remaining in full force and enforceable by the entity to which Itec LLC has transferred or sold the loan, the loan agreement and the security agreement.
19. **Other.** It is further agreed that the loan agreement and the security agreement are not affected and remain in full force, if Itec LLC enters other agreements with Amiga Inc., or any other party or contractor affiliated with Amiga Inc., and that any assistance by Itec LLC to suggest and help to secure permanent funding for Amiga Inc. cannot and is not construed as changing or modifying this loan facility agreement or the security agreement in any way or form in any of its provisions.
20. **Applicable Law.** This Agreement is made with reference to and is to be construed in accordance with the laws of the State of Washington, without regard to that state's choice of law rules. Borrower agrees that the venue of any action in connection herewith may be laid in or transferred to King County, Washington, at the option of the Lender.

NOTICE; ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING

May 12 04 11:55a

McEwen

425-432-0608

p.1

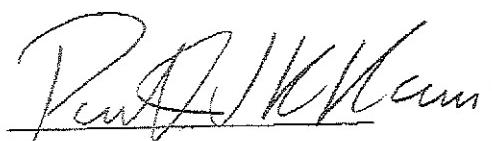
REPAYMENT OF DEBT ARE NOT TO BE ENFORCEABLE UNDER  
WASHINGTON LAW.

Lender:

Itec LLC

Borrower:

Amiga Inc.



Dr. Penti Kouri, Managing Member



Bill McEwen, President

## SECURITY AGREEMENT

This Security Agreement, dated July 3, 2003 (this "Agreement") is made by Amiga, Inc. (the "Borrower") located at 24403 256<sup>th</sup> Avenue SE, P.O. Box 887 Ravensdale, WA 98051 and Itec LLC (the "Lender") located at 102 Prince Street, New York, NY 10012.

The Lender has loaned and will loan certain sums to the Borrower pursuant to a Loan Facility Agreement dated May 22, 2003. The parties agree that the Borrower will grant the Lender a Security Interest in and to all Intellectual Property (as defined below) of the Borrower as collateral to each and all monies advanced pursuant to the Loan Facility Agreement, including accrued interest on such monies. The total of all monies advanced inclusive of accrued interest is called the "Note". The parties further agree as follows:

### 1. Assignment and Grant of Security Interest

Borrower hereby grants to Lender a security interest in the following assets (the "Intellectual Property"):

- (a) The Brand name Amiga, the Logo of Amiga, and all trademarks of Amiga in all countries, as summarized in exhibit A, the attached document, "Amiga, Inc. Trademark Status Report, 14.24.2003".
- (b) All domain names, including but not limited to www.amiga.com and www.amiga.net
- (c) All software owned by Amiga Inc., meaning all versions of the Amiga Operating System, and all Amiga Inc. owned tools and utilities and Software for which Amiga Inc. holds U.S. copyright registrations, as listed in exhibit B.
- (d) All software developed since the signing of the Software Acquisition Agreement on December 28, 1999 by and between Amino Development corporation and Amiga Development LLC, consisting of Software listed in exhibit C as of July 3, 2003.
- (e) All rights to the use of certain patents by Amiga Inc., pursuant to the Non-Exclusive Patent License Agreement of December 1999 by and between Amiga Development LLC and Amino Development Corporation. The patents are listed in exhibit D.
- (f) All other assets pertaining to software, new software products, hardware designs and applications, as well as ideas, plans, sketches and designs of the same.
- (g) All web sites, developer support sites, e-commerce sites and the underlying enabling technology, design and implementation.

### 2. Protection Documentation of Intellectual Property

The Borrower will use best efforts to keep diligent records of all documentation on its intellectual property, exercises proper control of the possession and access to source codes, documentation of software, and any trade and business secrets. To the extent the Borrower's financial capability allows it to do so, the Borrower will also use best efforts to pay all patent fees, registration fees, and legal fees to maintain all forms of

sec ag amiga

legal protection such as patents, trademarks, domain names, and copyrights current and in force in all countries where such IP assets are currently protected.

**3. UCC Filing Lender's Security Interests**

The Lender may at anytime register its security interests in the Intellectual Property of the Borrower by means of UCC Filing without any further notice to the Borrower.

**4. No Liens, Encumbrances, or Transfers**

The Borrower warrants and represents that except as set forth on Schedule 1 hereto, there are no liens or encumbrances on the Intellectual Property, and agrees not to put any further liens or encumbrances on, or sell or transfer the same without a written authorization by the Lender.

**5. Default on the Security Agreement**

The occurrence of any of the following shall constitute an "Event of Default Under the Security Agreement":

- (a) the breach of any material condition or obligation under the Security Agreement and the continuation of such breach for 30 days after receipt of notice thereof, or
- (b) the filing of a petition by or against the Borrower under any provision of the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time, or under any similar law relating to bankruptcy, insolvency or other relief for debtors; or appointment of a receiver, trustee, custodian or liquidator of or for all or any part of the assets or property of the Borrower or the making of a general assignment for the benefit of creditors by the Borrower.
- (c) **Remedies on Borrower Default on the Security Agreement.** After an Event of Default, the interest rate on all amounts due and owing on the Note shall be 16% per annum. Upon the occurrence of any Event of Default, the Lender, at its option, May (a) by notice to the Borrower, declare the unpaid principal amount of this Note, all interest accrued and unpaid hereon and all other amounts payable hereunder to be immediately due and payable, whereupon the unpaid principal amount of this Note, all such interest and all such other amounts shall become immediately due and payable, without presentment, demand, protest or further notice of any kind, provided that if an Event of Default shall occur, the result which would otherwise occur only upon giving of notice by the Lender to the Borrower as specified above shall occur automatically, without the giving of any such notice; and (b) whether or not the actions referred to in clause (i) have been taken, exercise any or all of the Lender's rights and remedies available to the Lender under the Security Agreement and applicable law.

**6. Default on Loan Payment**

If the borrower does not pay the full amount owed on or before May 22, 2004, it is agreed that the Lender can at its sole discretion foreclose on all the assets that secure the loan pursuant to the Loan Facility Agreement and the Security Agreement. If the Lender decides to foreclose, it will notify all secured creditors, as listed on Schedule 1, of its intent to do so.

**7. Penalty Interest**

If the loan is not fully paid with interest on May 22, 2004, it is agreed that the amount owed, including accrued interest as of May 22, 2004 accrues interest at a penalty rate of 16 percent annual to be computed daily (based on a year of 365 days) until paid in full or satisfied. On or before June 22, 2004, Borrower will make best efforts to provide Lender with a complete, documented accounting of the use of funds loaned by the Lender.

**7. Maximum Interest**

Notwithstanding any other provisions of this Note, interest, fees and charges payable by reason of the indebtedness evidenced hereby shall not exceed the maximum, if any, permitted by governing law.

**8. Indemnification**

It is recognized that in making the Loan Facility Agreement and the Security Agreement, the lender relies on warrants and representations of the Borrower with respect to all issues relevant to the Loan Facility Agreement and the Security Agreement.

**9. Transferability**

It is further agreed that Itec LLC may, at its sole discretion, freely transfer or sell the loan to another entity with all the terms, conditions and provisions of the Loan Facility Agreement and the Security Agreement remaining in full force and enforceable by the entity to which Itec LLC has transferred or sold the loan, the Loan Facility Agreement and the Security Agreement.

**10. Other**

It is further agreed that the Loan Facility Agreement and the Security Agreement are not affected and remain in full force, if Itec LLC enters other agreements with Amiga Inc., or any other party or contractor affiliated with Amiga Inc., and that any assistance by Itec LLC to suggest and help to secure permanent funding for Amiga Inc. cannot and is not construed as changing or modifying the Loan Facility Agreement or the Security Agreement in any way or form in any of its provisions.

**11. Applicable Law**

This Agreement is made with reference to and is to be construed in accordance with the laws of the State of Washington, without regard to that state's choice of law rules. Borrower agrees that the venue of any action in connection herewith may be laid in or transferred to King County, Washington, at the option of the Lender.

NOTICE; ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF DEBT ARE NOT TO BE ENFORCEABLE UNDER WASHINGTON LAW.

Lender:

Itec LLC



Dr. Pentti Kouri, Managing Member

Borrower:

Amiga Inc.



Bill McEwen, President

Itec LLC

May 12, 2004

William McEwen  
President  
Amiga Inc.

Dear Bill:

This is to confirm that at your request Itec LLC will advance further fifty thousand dollars (\$50,000) pursuant to the Loan Facility Agreement of May 22, 2003, subject to the same terms and conditions.

As you are aware, the outstanding loan balance, currently 198,950 dollars, and after this new loan a total of 248,950 dollars becomes due and payable on May 22, 2004. Including accrued interest, the total amount payable on May 22, 2004 is equal to 267,159 dollars.

Please be advised that if payment of the total amount due is not made in full and so confirmed on the due date of May 22, 2004, Itec LLC will take immediate steps to foreclose on the intellectual property of Amiga Inc., which, pursuant to the Loan Facility Agreement of May 22, 2003 and the Security Agreement of July 3, 2003, secures all the monies lent, as well as the accrued interest thereon.

Please provide an updated list of all the intellectual property of Amiga Inc. as of this day of May 12, 2004 indicating which, if any, changes have taken place since July 3, 2003.

Please sign below to confirm the total liability of 267,159 dollars of Amiga Inc. to Itec LLC [Please also sign the attached list of installments pursuant to the Loan Facility Agreement with accrued interest], as well as to confirm that you understand that in case of nonpayment on May 22, 2004, Itec LLC will take immediate steps to foreclose on all the collateral, and further to confirm that you

have the authority to accept the added liability of 50,000 dollars on behalf of Amiga Inc.

New York, May 12, 2004



Pentti Kouri  
Managing Member, Itec LLC

Acknowledged and Confirmed



William McEwen  
President  
Amiga Inc.

Itec LLC  
Loans to Amiga Inc.  
with accrued interest to 5/22/04 @12%

Date/Transferee	Amount	Interest	Remitter
5/22/03 Bill McEwen	2,500	305	Itec LLC
6/9/03 Amiga	20,000	2,320	Itec LLC
7/31/03 Amiga	7,500	740	Itec LLC
9/5/03 Amiga	1,000	87	Itec LLC
9/9/03 Amiga	3,000	256	Itec LLC
10/2/03 Amiga	2,000	155	Itec LLC
10/23/03 Amiga	20,000	1,413	Itec LLC
1/22/04 Amiga	5,000	202	Itec LLC
2/24/04 Amiga	6,500	191	Itec LLC
3/4/04 Amiga attorney	10,000	263	Itec LLC
7/1/03 Bill McEwen	6,000	592	Janne Kouri on behalf of Itec LLC
2/3/2003 Amiga	35,000	5,530	Tachyon Corp.on behalf on Itec LLC
2/5/03 attorney	5,000	787	Tachyon Corp.on behalf on Itec LLC
2/28/2003 Amiga	750	112	Tachyon Corp.on behalf on Itec LLC
4/3/2003 Amiga	10,000	1,383	Tachyon Corp.on behalf on Itec LLC
4/10/2003 Amiga	15,000	2,040	Tachyon Corp.on behalf on Itec LLC
4/17/2003 Amiga	5,000	668	Tachyon Corp.on behalf on Itec LLC
5/14/2003 Amiga	5,000	623	Tachyon Corp.on behalf on Itec LLC
3/12/2004 Bill McEwen	1,500	36	Itec LLC
3/16/04 Amiga attorney	10,000	223	Itec LLC
3/19/2004 Amiga	1,500	32	Itec LLC
3/31/2004 Amiga	10,000	173	Itec LLC
4/7/04 Amiga	7,500	123	Itec LLC
4/12/04 Barrie Jon Moss	5,200	76	Itec LLC
5/5/04 Amiga	1,500	9	Itec LLC
5/10/04 Barrie Jon Moss	5,000	28	Itec LLC
5/12/04 Bill McEwen	50,000	167	Itec LLC
Less prepayment by Bill McEwen	(2,500)	(325)	
Total balance 5/22/04	<u>248,950</u>	<u>18,209</u>	
Total loan payments	248,950		
Add Interest to 5/22/04	<u>18,209</u>		
Grand total	<u><u>267,159</u></u>		

Reviewed and accepted



By Bill McEwen  
Amiga Inc.  
President  
Dated 5/12/04

FROM : GARRY HARE

FAX NO. : 4154592448

Dec. 13 2004 02:53PM P1

**Stock Purchase and Sale Agreement and Agreement of  
Assignment of Intellectual Property Rights**

This stock purchase and sale agreement and agreement of assignment of intellectual property rights (the "Agreement") dated October 7, 2003, is by Itec LLC, a New York State Limited Liability company, with address at 102 Prince Street, New York, NY 10012, Tel. 212.431.1624 (hereafter referred to as "Seller") and KMOS Inc., a Delaware registered corporation with address at 102 Prince street, New York, NY 10012 Tel. 212.431.1624 (hereafter referred to as "Purchaser").

Witnesseth;

WHEREAS:

The seller is the owner of the Object Code, Source Code and Intellectual property of an operating system known as OS4 (hereafter referred to as OS4), previously owned by Amiga Inc, pursuant to an Agreement between Itec LLC and Hyperion VOF dated 24<sup>th</sup> of April 2003 (attached), and acknowledged by Amiga Inc. and its CEO in a letter dated October 10, 2003 (attached).

WHEREAS

There are no liens, liabilities or encumbrances on the seller's ownership of OS4, other than the license granted to Eytech Group Ltd. pursuant to an agreement between Amiga Inc., Hyperion VOF and Eytech Group Ltd. dated November 3<sup>rd</sup>, 2001 (attached).

WHEREAS

The license granted to Eytech gives Eytech the right to use OS4 and the name Amiga in a computer it manufactures and sells called Amiga One; it gives Eytech no other rights with respect to OS4.

Case 2:07-cv-00631-RSM Document 35-2 Filed 05/25/2007 Page 6 of 9

FROM :GARRY HARE

FAX NO. :4154592448

Dec. 13 2004 02:53PM P2

## WHEREAS

KMOS Inc. is a newly created company registered in Delaware fully owned by Monrepos LLC, a New York State Limited Liability Company with offices at 167 Madison Avenue, Suite 301, New York, NY 10016, Tel. 203.253.9298.

## WHEREAS

KMOS Inc. has 8,000,000 shares issued and outstanding and 25,000,000 shares authorized.

## WHEREAS

Monrepos LLC owns 1,000 shares of KMOS Inc, constituting 100% of the shares issued, and held outside the company.

## WHEREAS

KMOS Inc. is a duly constituted company in good standing with no liabilities, and is not subject to any liens or encumbrances, or subject to or party to any legal action.

## WHEREAS

KMOS Inc. was created for the purpose of acquiring, further developing and marketing a new operating system for the rapidly growing market of wireless devices, gaming devices, set top boxes and other embedded devices, as well as other software products and solutions for the same space.

## WHEREAS

KMOS Inc. plans to raise such funding as is required, estimated by the company to be 5,000,000 dollars (five million), and will hire such management, marketing and software engineering resources as necessary.

## NOW, THEREFORE

The parties agree that KMOS Inc. will acquire from Itec LLC, and Itec LLC will assign to KMOS Inc. all rights to the Object Code, the Source Code and Intellectual Property of the Operating System OS4 by issuing to Itec LLC 6,999,000 shares of KMOS Inc. As a result, Itec LLC will own 6,999,000 shares of the total of 7,000,000 shares of KMOS Inc. outstanding, while KMOS Inc. owns the Object Code, the Source Code and all Intellectual Property of OS4.

The parties further agree that all business enabled by OS4 and all possible future acquisitions of related business assets, including but not limited to the content engine, the content rights, the scripting tools, the Amiga brand name, and contracts with the Amiga

Case 2:07-cv-00631-RSM Document 35-2 Filed 05/25/2007 Page 7 of 9

FROM :GARRY HARE

FAX NO. :4154592440

Dec. 13 2004 02:54PM P3

development community, whether by means of purchase by cash or shares, or merger, will henceforth be effected by KMOS Inc. It is further agreed that KMOS Inc. will raise such funding, and will hire such management, marketing and software engineering resources as is necessary to build and expand the business enabled by its ownership of OS4.

In witness of which agreement, each of the parties hereto is executing this instrument as of the date first set forth above.

Seller:  
Itec LLC



Pentti Kouri  
Managing Partner

Purchaser:  
KMOS Inc.



Pentti Kouri  
President

Acknowledged and Agreed to by Monrepos LLC:



Pentti Kouri  
Managing Partner

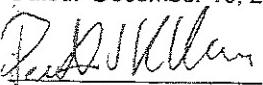
EX-1  
MINUTES OF CORPORATION MEETING OF  
KMOS, Incorporated

The Board of Directors of KMOS, Inc. acted at a meeting via telephone on December 10, 2004 pursuant to the Delaware Corporations Code and the corporation's Bylaws, adopts the following resolutions:

1. The following officers are elected to serve the corporation until February 15, 2006, or until their resignation or disqualification:
  - Chairman: Pentti Kouri
  - President and CEO: Garry Hare
  - Secretary: John Gryzmala

2. The following actions, taken by or on behalf of the corporation since its last ratification of corporate action, are hereby ratified:
  - a. Resolved, that the Board of Directors of KMOS, Incorporated due hereby adopt and approve the establishment of an Employee Options Program and authorize 8,000,000 shares of Common Stock at an initial exercise price of \$.30 per share.
  - b. Resolved, that the Board of Directors of KMOS, Inc. hereby adopt and approve changing the Corporate name from KMOS, Inc. to Amiga, Inc.
  - c. Resolved, that the Board of Directors of KMOS, Inc. hereby adopt and approve the purchase of 400,000 shares of Common Stock at a price of \$.60 per share from Amino Development Corporation. Amino Development Corporation's use of proceeds from this stock purchase must be approved by the CEO of KMOS, Inc.
  - d. Resolved, that the Board of Directors of KMOS, Inc. hereby authorize the CEO of KMOS, Inc. to enter into an agreement with Inveraray Partners for the purpose of Investment Banking Service.
  - e. Resolved, that the Board of Directors of KMOS, Inc. hereby authorizes the CEO of KMOS, Inc. to enter into an agreement with McDermott, Will and Emery for the purpose of general legal and intellectual property protection services.

Dated: December 10, 2004

  
Pentti Kouri

  
Garry Hare

  
John Gryzmala

Corporations: Registration Detail

Page 1 of 2



CORPOR

Corporations Menu

» Print Page

Enter Keywords

See

**Corporations Division - Registration Data Search****AMIGA, INC.**

UBI Number	601983734
Category	Regular Corporation
Profit/Nonprofit	Profit
Active/Inactive	Inactive
State of incorporation	WA
Date of incorporation	09/30/1999
License Expiration Date	09/30/2004

**Registered Agent Information**

Agent Name	CAIRNCROSS & HEMPELMANN PS
Address	524 SECOND AVE #500
City	SEATTLE
State	WA
ZIP	981042323

**Special Address Information**

Address
City
State
Zip

[« Return to Search List](#)**Exhibit F, Page 28****Disclaimer**

Information in the Secretary of State's Online Corporations Database is updated Monday through Friday by 5:00 Pacific Standard Time (state holidays excluded). Neither the State of Washington nor any agency, officer, or employee

Corporations: Registration Detail

Page 1 of 2



CORPOR

Corporations Menu

» Print Page

Enter Keywords

## Corporations Division - Registration Data Search

### AMINO DEVELOPMENT CORPORATION

UBI Number 601983734  
 Category Regular Corporation  
 Profit/Nonprofit Profit  
 Active/Inactive Active  
 State of Incorporation WA  
 Date of Incorporation 09/30/1999  
 License Expiration Date 09/30/2008

#### Registered Agent Information

Agent Name CAIRNCROSS & HEMPELMANN PS  
 Address 524 SECOND AVE #500  
 City SEATTLE  
 State WA  
 ZIP 981042323

#### Special Address Information

Address  
 City  
 State  
 Zip

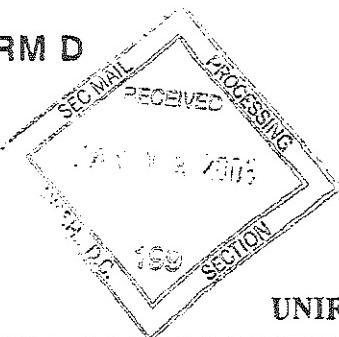
[« Return to Search List](#)

**Exhibit G, Page 29**

#### Disclaimer

Information in the Secretary of State's Online Corporations Database is updated Monday through Friday by 5:00 Pacific Standard Time (state holidays excluded). Neither the State of Washington nor any agency, officer, or em

1351310

**FORM D**

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM D**

**NOTICE OF SALE OF SECURITIES  
PURSUANT TO REGULATION D,  
SECTION 4(6), AND/OR  
UNIFORM LIMITED OFFERING EXEMPTION**

<b>OMB APPROVAL</b>
OMB Number: 3235-0076
Expires: April 30, 2008
Estimated average burden hours per response.....16.00



06022287

Name of Offering ( check if this is an amendment and name has changed, and indicate change.)

\$4 million offering of common stock of Amiga, Inc.

Filing Under (Check box(es) that apply):  Rule 504  Rule 505  Rule 506  Section 4(6)  ULOEType of Filing:  New Filing  Amendment**A. BASIC IDENTIFICATION DATA**

1. Enter the information requested about the issuer

Name of Issuer ( check if this is an amendment and name has changed, and indicate change.)

Amiga, Inc.

Address of Executive Offices	(Number and Street, City, State, Zip Code)	Telephone Number (Including Area Code)
167 Madison Avenue, New York, NY 10016		212-431-1624
Address of Principal Business Operations (if different from Executive Offices)	(Number and Street, City, State, Zip Code)	Telephone Number (Including Area Code)

Brief Description of Business

PROCESSED

Software company

Type of Business Organization

corporation  
 business trust

limited partnership, already formed  
 limited partnership, to be formed

 other (please specify):

JAN 30 2008

Actual or Estimated Date of Incorporation or Organization: 1 0 0 3  Actual  EstimatedJurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State; CN for Canada; FN for other foreign jurisdiction)  CN  FN

Month Year

**GENERAL INSTRUCTIONS****Federal:**

**Who Must File:** All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

**When To File:** A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

**Where To File:** U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

**Copies Required:** Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

**Information Required:** A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

**Filing Fee:** There is no federal filing fee.

**State:**

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

**ATTENTION**

Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.

**A. BASIC IDENTIFICATION DATA**

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Grzymala, John A.

Business or Residence Address (Number and Street, City, State, Zip Code)

167 Madison Avenue, New York, NY 10016

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Kouri, Pentti

Business or Residence Address (Number and Street, City, State, Zip Code)

102 Prince Street, New York, NY 10012

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

ITEC, LLC

Business or Residence Address (Number and Street, City, State, Zip Code)

102 Prince Street, New York, NY 10012

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

The Kouri Family Trust dated February 17, 1989

Business or Residence Address (Number and Street, City, State, Zip Code)

102 Prince Street, New York, NY 10012

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Amino, Inc.

Business or Residence Address (Number and Street, City, State, Zip Code)

24403 256th Avenue, SE, Ravensdale, WA 98051

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply:  Promoter  Beneficial Owner  Executive Officer  Director  General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

(Use blank sheet, or copy and use additional copies of this sheet, as necessary)

**B. INFORMATION ABOUT OFFERING**

<p>1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering?.....</p> <p style="text-align: center;">Answer also in Appendix, Column 2, if filing under ULOE.</p> <p>2. What is the minimum investment that will be accepted from any individual?.....</p> <p>3. Does the offering permit joint ownership of a single unit? .....</p> <p>4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small>No specified minimum subscription</small> <small>\$ _____</small>
---	--

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

**States in Which Person Listed Has Solicited or Intends to Solicit Purchasers**

(Check "All States" or check individual States) .....

 All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

**States in Which Person Listed Has Solicited or Intends to Solicit Purchasers**

(Check "All States" or check individual States) .....

 All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

**States in Which Person Listed Has Solicited or Intends to Solicit Purchasers**

(Check "All States" or check individual States) .....

 All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

**C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS**

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if the answer is "none" or "zero." If the transaction is an exchange offering, check this box  and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

Type of Security	Aggregate Offering Price	Amount Already Sold
Debt .....	\$ 0.00	\$ 0.00
Equity .... <small>(common stock plus warrants to purchase common stock)</small> .....	\$ 2,000,000.00	\$ 2,000,000.00
<input checked="" type="checkbox"/> Common <input type="checkbox"/> Preferred		
Convertible Securities (including warrants) .....	\$ 0.00	\$ 0.00
Partnership Interests .....	\$ 0.00	\$ 0.00
Other (Specify _____) .....	\$ 0.00	\$ 0.00
Total .....	\$ 2,000,000.00	\$ 2,000,000.00

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero."

	Number Investors	Aggregate Dollar Amount of Purchases
Accredited Investors .....	1	\$ 2,000,000.00
Non-accredited Investors .....	0	\$ 0.00
Total (for filings under Rule 504 only) .....	0	\$ 0.00

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, in the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C — Question 1.

Type of Offering	Type of Security	Dollar Amount Sold
Rule 505 .....		\$ _____
Regulation A .....		\$ _____
Rule 504 .....		\$ _____
Total .....		\$ N/A

4. a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the issuer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

Transfer Agent's Fees .....	<input type="checkbox"/> \$ _____
Printing and Engraving Costs .....	<input type="checkbox"/> \$ _____
Legal Fees .....	<input checked="" type="checkbox"/> \$ 25,000.00
Accounting Fees .....	<input type="checkbox"/> \$ _____
Engineering Fees .....	<input type="checkbox"/> \$ _____
Sales Commissions (specify finders' fees separately) .....	<input type="checkbox"/> \$ _____
Other Expenses (identify) .....	<input type="checkbox"/> \$ _____
Total .....	<input checked="" type="checkbox"/> \$ 25,000.00

**C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS**

- b. Enter the difference between the aggregate offering price given in response to Part C — Question 1 and total expenses furnished in response to Part C — Question 4.a. This difference is the "adjusted gross proceeds to the issuer." ..... \$ 1,975,000.00
5. Indicate below the amount of the adjusted gross proceed to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C — Question 4.b above.

	Payments to Officers, Directors, & Affiliates	Payments to Others
Salaries and fees .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Purchase of real estate .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Purchase, rental or leasing and installation of machinery and equipment .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Construction or leasing of plant buildings and facilities .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger) .....	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Repayment of indebtedness .....	<input checked="" type="checkbox"/> \$ <u>1,000,000.00</u>	<input type="checkbox"/> \$ _____
Working capital .....	<input type="checkbox"/> \$ _____	<input checked="" type="checkbox"/> \$ <u>975,000.00</u>
Other (specify): _____	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
_____	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ _____
Column Totals .....	<input checked="" type="checkbox"/> \$ <u>1,000,000.00</u>	<input checked="" type="checkbox"/> \$ <u>975,000.00</u>
Total Payments Listed (column totals added) .....	<input checked="" type="checkbox"/> \$ <u>1,975,000.00</u>	

**D. FEDERAL SIGNATURE**

The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

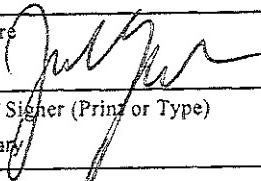
Issuer (Print or Type) Amiga, Inc.	Signature 	Date <u>JANUARY 12, 2006</u>
Name of Signer (Print or Type) John A. Grzymala	Title of Signer (Print or Type) Secretary	

Exhibit H, Page 34

**ATTENTION**

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

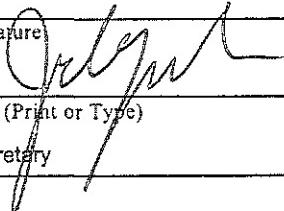
**E. STATE SIGNATURE**

1. Is any party described in 17 CFR 230.262 presently subject to any of the disqualification provisions of such rule? ..... Yes  No

See Appendix, Column 5, for state response.

2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed a notice on Form D (17 CFR 239.500) at such times as required by state law.
3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to offerees.
4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform Limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Issuer (Print or Type)	Signature	Date
Amiga, Inc.		JANUARY 12, 2006
Name (Print or Type)	Title (Print or Type)	
John A. Grzymala	Secretary	

*Instruction:*

Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

## APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)		Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1)	
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
AL									
AK									
AZ									
AR									
CA									
CO									
CT									
DE									
DC									
FL									
GA									
HI									
ID									
IL									
IN									
IA									
KS									
KY									
LA									
ME									
MD									
MA									
MI									
MN									
MS									

## APPENDIX

1	2 Intend to sell to non-accredited investors in State (Part B-Item 1)		3 Type of security and aggregate offering price offered in state (Part C-Item 1)	4 Type of investor and amount purchased in State (Part C-Item 2)				5 Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1)			
				State	Yes	No	Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	
MO											
MT											
NE											
NV											
NH											
NJ											
NM											
NY											
NC											
ND											
OH											
OK											
OR											
PA											
RI											
SC											
SD											
TN											
TX											
UT											
VT											
VA											
WA											
WV											
WI											

## APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)		Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1)	
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
WY									
PR									

1 THE HONORABLE ROBERT S. LASNIK  
2  
3  
4  
5  
6  
7  
8

9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

11 THENDIC ELECTRONICS COMPONENTS, a  
12 foreign corporation, and GENESI SARL, a  
13 foreign corporation,

Plaintiffs,

v.

14 AMIGA INC., a corporation in the state of  
15 Washington,

Defendant.

16 NO. 003-0003

17  
18  
19  
20  
21  
22  
23  
24  
25  
**DECLARATION OF GARRY HARE IN  
SUPPORT OF AMIGA, INC.'S RESPONSE  
TO MOTION TO MODIFY THE ORDER  
GRANTING SPECIFIC PERFORMANCE**

I, Garry Hare, declare as follows:

1. I am the Chief Executive Officer of KMOS, Inc., a Delaware corporation  
("KMOS"). I have responsibility for all facets of KMOS's business activities. I have personal  
knowledge of the facts contained herein and am competent to testify thereto.

2. On April 24, 2003, Itec, LLC, ("Itec") a State of New York, U.S.A., limited  
liability company acquired all rights and ownership to Amiga Inc.'s Operating System ("Amiga  
OS"). Itec's acquisition included Amiga OS source code including, but not limited to, the

DECLARATION OF GARRY HARE IN SUPPORT OF  
AMIGA, INC.'S RESPONSE TO MOTION TO MODIFY THE  
ORDER GRANTING SPECIFIC PERFORMANCE - 1

*Cairncross & Hempelmann, P.S.*  
*Law Offices*  
524 Second Avenue, Suite 500  
Seattle, Washington 98104-2323  
Phone: 206-587-0700 • Fax: 206-587-2308

1 Classic Amiga OS, OS 3.1, OS 3.5, OS 3.9, OS 4.0 (not yet commercially available) and all  
2 subsequent versions of this source code and associated trademarks. The Classic Amiga OS  
3 means the operating system owned and developed by Amiga and largely based on the operating  
4 system shipped with the Commodore Amiga line of computers sold in the 1980's and early  
5 1990's.

6           3.       In addition, Itec's acquisition specifically included "Object Code," meaning  
7 software in a machine readable form that is not convenient to human understanding of the  
8 program logic, and that can be executed by a computer, or other device, using the appropriate  
9 operating system without compilation or interpretation.

10       4. On October 10, 2003, KMOS entered into a Stock Purchase and Sale Agreement  
11 and Agreement of Assignment of Intellectual Property Rights (the "Agreement") under which it  
12 acquired all Itec's interest in Amiga's Amiga OS family of products.

13        5. As part of the Agreement, KMOS specifically agreed to honor the terms of  
14 Amiga's November 3, 2001 (OEM) License and Software Development Agreement with Amiga  
15 One Partners: Hyperion VOF, a Belgian corporation and Eyetech Group Ltd., an English  
16 corporation in regards to Amiga OS 4.0.

17       6.     Except as directly associated with the Amiga OS products and all future versions  
18     of Amiga OS, KMOS specifically did not acquire the rights to the Amiga name, patents,  
19     intellectual property, trademarks or Amiga's DE product line. These assets remain the property  
20     of Amiga Inc.

21 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
22 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 12<sup>th</sup> day of March, 2004 at Kentfield, California.

27 See Attached  
25 Garry Hare

DECLARATION OF GARRY HARE IN SUPPORT OF  
AMIGA, INC.'S RESPONSE TO MOTION TO MODIFY THE  
ORDER GRANTING SPECIFIC PERFORMANCE - 2

*Cairncross & Hempelmann, P.S.  
Law Offices  
524 Second Avenue, Suite 500  
Seattle, Washington 98104-2323  
Phone: 206-587-0700 • Fax: 206-587-2308*

1 Classic Amiga OS, OS 3.1, OS 3.5, OS 3.9, OS 4.0 (not yet commercially available) and all  
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3 means the operating system owned and developed by Amiga and largely based on the operating  
4 system shipped with the Commodore Amiga line of computers sold in the 1980's and early  
5 1990's.

6 3. In addition, Itec's acquisition specifically included "Object Code," meaning  
7 software in a machine readable form that is not convenient to human understanding of the  
8 program logic, and that can be executed by a computer, or other device, using the appropriate  
9 operating system without compilation or interpretation.

10 4. On October 10, 2003, KMOS entered into a Stock Purchase and Sale Agreement  
11 and Agreement of Assignment of Intellectual Property Rights (the "Agreement") under which it  
12 acquired all Itec's interest in Amiga's Amiga OS family of products.

13 5. As part of the Agreement, KMOS specifically agreed to honor the terms of  
14 Amiga's November 3, 2001 (OEM) License and Software Development Agreement with Amiga  
15 One Partners: Hyperion VOF, a Belgian corporation and Eyetech Group Ltd., an English  
16 corporation in regards to Amiga OS 4.0.

17 6. Except as directly associated with the Amiga OS products and all future versions  
18 of Amiga OS, KMOS specifically did not acquire the rights to the Amiga name, patents,  
19 intellectual property, trademarks or Amiga's DE product line. These assets remain the property  
20 of Amiga Inc.

21 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
22 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

23 DATED this 12 day of March, 2004 at Kentfield, California.

24  
25 Garry Hare

DECLARATION OF GARRY HARE IN SUPPORT OF  
AMIGA, INC.'S RESPONSE TO MOTION TO MODIFY THE  
ORDER GRANTING SPECIFIC PERFORMANCE - 2

Cairncross & Hempelmann, P.S.  
Law Offices  
524 Second Avenue, Suite 300  
Seattle, Washington 98104-2323  
Phone: 206-587-0700 • Fax: 206-587-2308

Hyperion Entertainment VOF  
Brouwersstr. 1 Bus 19  
B-3000 Leuven  
Belgium  
  
VAT BE 466-380-552  
O.R. 0466 380 552

ITEC LLC  
102 Prince Street  
New York  
NY 10012  
U.S.A.

DESCRIPTION	AMOUNT	
Payment pursuant to article 3.01 of the November 3, 2001 agreement between Amiga, Eyetech and Hyperion	22,500.00	USD
TOTAL:	22,500.00	USD

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
IN SEATTLE

AMIGA, INC., a Delaware corporation, )  
Plaintiff, ) No. C07-631RSM  
v. )  
HYPERION VOF, a Belgium corporation, )  
Defendant. )

MOTION FOR PRELIMINARY INJUNCTION

BEFORE THE HONORABLE RICARDO S. MARTINEZ

May 31, 2007

## APPEARANCES:

For the Plaintiff: Scott Baker  
and  
Morgan Tovey  
Reed Smith  
Attorneys at Law

Lawrence R. Cock  
Cable, Langenbach, Kinerk & Bauer  
Attorney at Law

For the Defendant: William Kinsel  
Kinsel Law Offices  
Attorney at Law

1 possession."

2       The plaintiff is seeking to have this Court extend its  
3 jurisdiction to people that unquestionably are not subject to  
4 this Court's jurisdiction.

5       It will be impossible for my client to comply in 20 days or  
6 ten days, to compel people who are not subject to this Court's  
7 jurisdiction, to provide them with anything if they don't want  
8 to.

9       And as the Frieden brothers' declaration make quite clear,  
10 they were assured by Mr. McEwen in February of this year, oh, no,  
11 I am not trying to take your source code through the lawsuit.  
12 And now they are. And clearly they are unhappy, and they will  
13 not agree to that sort of thing. And they have no obligation to  
14 comply with an order of that sort.

15       THE COURT: Counsel, I recognize we are at the very  
16 early stages of litigation here, but as to date Hyperion has not  
17 objected to either venue or jurisdiction of this Court, correct?

18       MR. KINSEL: To date, yes. Well, the contract  
19 specifically has a foreign clause. We are reserving our rights  
20 about the proper service of process under the Hague Convention.  
21 That is still under investigation as to whether or not that was  
22 properly completed. I don't think that there is any basis for  
23 Hyperion itself to say that this Court does not have jurisdiction  
24 and that this venue is not appropriate under that particular  
25 contract.

1       If you have any questions?

2           THE COURT: Thank you, Counsel. Short reply.

3           MR. BAKER: Yes, your Honor. I will just hit on a  
4 couple of points, your Honor.

5           This issue about the assignment, we do have Mr. McEwen who  
6 attests in both of his declarations about the transfer of title,  
7 these rights, from Amiga Delaware to Eyetech to KMOS, and then  
8 the name change to Amiga Delaware. It started with Amiga  
9 Washington and ended with Amiga Delaware. That is in there.

10          What is crystal clear, and this comes from the very document  
11 that counsel just showed you a moment ago, which is Exhibit D to  
12 Mr. McEwen's declaration, in the one instance where there wasn't  
13 this contemporaneous signature by Hyperion on the assignment, you  
14 have this press release. And we have excerpted out. This is a  
15 joint press release that came from both Amiga and Hyperion. And  
16 here you have Evert Carton, who now in his papers says, gee, we  
17 never agreed we would go forward with this KMOS deal. He says,  
18 "we welcome the acquisition of the Amiga OS intellectual property  
19 by KMOS." It sounds to me like approval and ratification and  
20 consent, "together with KMOS we look forward to exploring new  
21 business opportunities for Amiga OS 4.1," which hopefully will be  
22 the next version, "under this same contract." He goes on to  
23 reassure his customers it is not going to slow anything down.

24          Just to finish off, your Honor, in connection with this  
25 particular document, the release that Carton is promising here,